SAM HANLON, SR.

IBLA 77-318 Decided August 17, 1979

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting Native allotment application, AA 7945.

Affirmed.

1. Alaska: Native Allotments -- Alaska: Possessory Rights -- Withdrawals and Reservations: Generally

   An allotment right is personal to one who has fully complied with the law and regulations and an applicant for a Native allotment may not tack on ancestral use and occupancy of the land to establish his right thereto. Ancestral use of the land while open to settlement does not create any right that excepts the land from a withdrawal in favor of an applicant who may have initiated use and occupancy subsequent to the withdrawal.

2. Administrative Proceeding: Hearings -- Alaska: Rules of Practice: Appeals: Hearings

   Where legal conclusions may be reached upon undisputed facts and there has been no proffer of further facts which could compel different legal conclusions, a request for a hearing is properly denied.

APPEARANCES: Howard J. Goldman, Esq., Alaska Legal Services Corp., Juneau, Alaska.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Sam Hanlon, Sr., has appealed from the decision, dated January 10, 1979, rendered by the Alaska State Office, Bureau of Land Management (BLM), rejecting his Native allotment application and evidence of occupancy, AA 7945. BLM held that (1) no rights to the land under the application inured to appellant by virtue of use and occupancy of appellant's ancestors; (2) the tracts applied for, Parcels A and B, were temporarily withdrawn on April 1, 1924, by Exec. Order No. 3983, from all forms of appropriation, pending possible inclusion in a national monument; (3) these parcels were added to the Tongass National Forest by Presidential Proclamation on February 26, 1925; (4) by Presidential Proclamation of April 18, 1939, Parcel A was made a part of the Glacier Bay National Monument; (5) appellant was born May 6, 1926, and therefore, could not have completed in his own right 5 years use and occupancy 1/ of the lands claimed prior to the effective date of the forest withdrawal; and (6) moreover, the Department of Agriculture representative has determined that the lands in Parcel B are not chiefly valuable for agricultural or grazing purposes. BLM concluded:

> Accordingly, since the applicant does not qualify for an allotment based on use and occupancy prior to the forest withdrawal and for inclusion in a national monument, and since the lands in Parcel B are not chiefly valuable for agricultural and grazing purposes, Mr. Hanlon's application and evidence of occupancy must be and is hereby rejected and the claim is canceled. The case file will be closed on the records when this decision becomes final.

We find no error in BLM's decision.

[1] An allotment right is personal to one who has fully complied with he law and the regulations and an applicant for a Native allotment may not tack on ancestral use and occupancy of the land to establish his right. In other words, such an applicant may not use the occupancy of public land by forbears to qualify himself for an allotment. The use and occupancy of public land by a forebear while the land was open to settlement, does not create any right that excepts the land from a withdrawal in favor of an applicant who may have

1/ Under revised policy, it is no longer necessary for a Native allotment applicant to show 5 years use and occupancy prior to a withdrawal, but use and occupancy must be commenced prior to the date of the withdrawal in order to except the claim from the impact of the withdrawal.

initiated independent use and occupancy subsequent to the withdrawal. Myrtle M. Jensen Shanigan, 29 IBLA 255 (1977); Mable Melovedoff, 29 IBLA 250 (1977).

The Board reaffirmed these concepts as recently as July 11, 1979, in Norman Opheim, 41 IBLA 338 (1979); cf. Magnel E. Drabek, 41 IBLA 219 (1979).

As indicated earlier, appellant was not in esse at the time of the withdrawal of April 1, 1924. Since he cannot tack on to the asserted occupancy of his forbears and was not in a position to commence independent use and occupancy prior to its withdrawal it follows that his Native allotment application was properly rejected. See Floyd L. Anderson, 41 IBLA 280, I.D. (1979).

[2] Appellant has requested "an oral hearing in this matter."

Where, as here, legal conclusions are reached upon undisputed facts, and there has been no proffer of further facts which could compel different legal conclusions, no useful purpose would be served by a hearing and a request therefor is properly denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge